

On October 10, 1995, the Administrative Law Judge conducted a hearing on claimant's motion for penalties. Prior to taking testimony, the Administrative Law Judge indicated the respondent was contending that claimant had sustained an intervening temporary aggravation and, therefore, should be relieved of all liability in this proceeding. After hearing additional testimony regarding potential subsequent injuries and accepting additional medical exhibits, the Administrative Law Judge found that the respondent and its insurance carrier were in violation of the July 1995 Order and that claimant was entitled to ongoing temporary total disability and medical benefits. In addition, the Administrative

Law Judge assessed penalties of one hundred dollars (\$100.00) per week if the respondent and insurance carrier did not comply with the July Order within ten (10) days.

The respondent and insurance carrier requested review of the October 10, 1995 Order and contend the respondent has no liability in this proceeding as claimant sustained a subsequent injury. No issue has been raised regarding the Judge's order for payment of penalties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

(1) Although the proceeding came before the Administrative Law Judge on claimant's motion for penalties, the issue addressed at the October 10, 1995 hearing was whether claimant was entitled to temporary total and medical benefits as a result of an accident that he sustained while working for the respondent or whether claimant's medical condition was instead the result of a subsequent accident for which this respondent would not be responsible. This is a preliminary hearing issue as contemplated by K.S.A. 44-534a and the jurisdiction of the Appeals Board to review such preliminary hearing issues is governed by that statute. Under K.S.A. 44-534a, the Appeals Board has the specific authority to review the issue now before us.

(2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The Administrative Law Judge correctly analyzed the facts and determined that claimant's present medical condition and need for medical treatment is a result of the May 1995 incident when claimant injured his back moving heavy cabinets while working for the respondent. Respondent's contention that claimant's present medical condition is a result of a subsequent accident is not established by the evidence. As the Administrative Law Judge concluded, although claimant's symptoms somewhat worsened while working for another employer in June and July 1995, they resolved to the level they were immediately before claimant commenced work with that employer.

(3) Because the parties raise no issue regarding the conditional assessment of penalties, that matter will not be addressed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on October 10, 1995, should be, and the same is, hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Dale V. Slape, Wichita, Kansas
Stephen A. McManus, Kansas City, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director